

REMARKS/ARGUMENTS

Interview

The Applicant agrees with the Examiner's characterization of the March 6, 2007 telephonic interview.

Substitute Specification

The December 29, 2006 Office Action advised that the substitute specification was not entered because there was no accompanying statement that no new matter had been added. That objection is not understood, because the substitute specification was filed with a statement to that effect signed by the attorney of record at that time (Robert D. Fish). In any event, PAIR shows the inventor filed a new statement with his response filed 3/27/07. In the even that this document is still not satisfactory for any reason, the Applicant requests that the Examiner contact the undersigned by telephone to resolve the issue.

The December 29, 2006 Office Action further advised that the specification contained disclosure in claim format. That issued was resolved by filing of the substitute specification.

35 USC 112

The Office objected to claim 21 as being indefinite in reciting "an intermediate substance that contact the skin". The concern apparently is whether or not the skin is to be regarded as part of the invention. Here, the claim recites the target area of the skin in the preamble, and has now been amended to expressly recite the "target area of skin" in the body of the claim. It should now be clear that the "target area of skin" is a work piece to the invention, and not part of the invention.

35 USC 102, 103 Rejections

The Office rejected all pending claim as being anticipated by Eppstein et al (US 5885211), or obvious over Eppstein in combination with other references. The Applicant sought to overcome those rejections by reciting heating in a non-ablative manner, but the Office maintained that non-ablative heating is new matter.

In the current amendments to independent claims 21, 38, the Applicant obviates those issues and arguments by expressly reciting that heat is applied in an amount that expands the pores of the target area. Those limitations are expressly supported at specification page 7, lines 1-14:

“In another preferred embodiment of the present invention, the target area comprises skin, and application of the energy thereto causes pores in the skin to expand. Pore expansion may be used to enhance transdermal drug delivery and/or as part of an acne treatment. Alternatively, drug delivery and acne treatment are performed responsive to the skin's ablation, irrespective of any pore expansion that may occur.”

(emphasis added) This new language completely circumvents Eppstein because Eppstein teaches only ablation, and the amendments require expanding pores, which can only occur if the pores still exist. Ablation destroys the pores, so that they no longer exist. Of course, all of the dependent claims are amended by virtue of their dependency on one of the independent claims.

None of the cited references, alone or in any combination, teach devices or methods that use an intermediate substance to transfer radiative energy to an area of skin to a degree that expands the pores, to enhance drug delivery or otherwise.

Technicalities

Claims 46, 47 have been amended to delete extraneous wording.

New Power Of Attorney

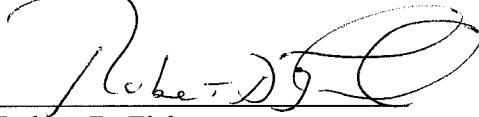
This response is accompanied by a new power of attorney in favor of the undersigned.

Request For Allowance

Claims 38-40 and 45-54 are pending in this application. The applicant requests allowance of all pending claims.

///

Respectfully submitted,
RUTAN & TUCKER

By 

Robert D. Fish
Reg. No. 33880

Rutan & Tucker, LLP
611 Anton Blvd., 14th Floor
Costa Mesa, CA 92626-1931
Telephone (714) 641-5100
Fax (714) 546-9035